

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE NORTHERN DISTRICT OF ILLINOIS

APR 14 2008

ROCKFORD DIVISION

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

08 C 50059

FREDERICK RICKY LAMBERT,)
(N-30421))
Petitioner,) Case No. 07-607-MJR
-vs-)
LEE RYKER,)
Respondent.)
)

RENEWAL OF MOTION FOR STAY

NOW COMES Frederick R. Lambert, Petitioner, Pro Se with assistance from a Prison Law Clerk, and Respectfully move this Honorable Court for a Stay pursuant to 28 U.S.C.A. §2254 et seq (2007). In support, Petitioner states :

1. That he filed a Writ of Habeas Corpus §2254 with the United States District Court, Southern District, Illinois on August 21, 2007.

2. That at the time of filing, Petitioner also submitted a Motion for Stay on his Federal Habeas Corpus Petition.

3. That on March 31, 2008 the Honorable Judge Reagan of the U.S. District Southern Court, transferred this matter to **this** Honorable Court. (See attached, Exhibit 3)

4. That while the Honorable Judge Reagan didn't act upon the the Writ itself or make any rulings prior to the transfer. For reasons unclear, Judge Reagan denied Petitioners Motion For Stay (**without prejudice**) at the same time he Transferred this matter to the U.S. Northern District Court. (Exhibit - 3)

A.

§2254 WRIT TIMELY FILED

Petitioners §2254 Writ for Federal Habeas Corpus Relief is timely filed and in support of this position, Petitioner present the following Procedural Facts.

Direct Appeal :

After his conviction and sentence, Petitioner filed a timely Notice of Appeal on **April 8, 1999**. On **August 3, 2001** the Illinois Appellate Court of the Second District rendered its decision Affirming in part, vacating in part and remanded. (Unpublished Order, App. # 2-99-0408) On **August 18, 2001** the State Prosecutor filed a Motion for Rehearing with the Illinois Appellate Court and said Motion was denied on **August 23, 2001**.

The Petitioner filed a timely Leave To Appeal to the Illinois Supreme Court on **September 26, 2001** and said Leave was denied on **October 5, 2001** (Case # 92458 at 763 N.E. 2d 774)

The State Prosecutor filed their timely Leave To Appeal to the Illinois Supreme Court on **September 27, 2001** and said Leave was denied in **January of 2003** (Case # 92474 at 787 N.E. 2d 177)

Post Conviction Petition :

While the State's Prosecutor Leave to Appeal was pending, the Petitioner filed a timely Post Conviction with the Circuit Court on **December 17, 2001** . The Circuit Court dismissed the Petition on **April 1, 2002**, Petitioner filed a Motion for Reconsideration on **April 29, 2002** ; it was denied on **May 9, 2002** and Petitioner filed a timely appeal on **May 24, 2002**.

On **May 10, 2004** the Illinois Appellate Court, Second District rendered its decision affirming the dismissal of Petitioners Post Conviction Petition. (App. Case #2-02-0560) Petitioner filed a timely Leave to Appeal to the Illinois Supreme Court on **June 14, 2004** and said Leave was denied in **September of 2004** (Case # 98610 at 823 N.E. 2d 973).

Resentencing Procedural History :

While his Post Conviction was pending on Appeal, Petitioner went back before the Circuit Court on **May 1, 2003** to be resentence.* After his 100 year sentence were reduced to 60 years, Petitioner filed a timely motion for reconsideration on **May 28, 2003**. The Court denied the Motion on **July 3, 2003** and Petitioner timely appealed on **8 / 1 / 03**.

On **April 10, 2006** the Illinois Appellate Court, Second District rendered a Publish Decision affirming the appeal. (casè # 2-03-0808 at 847 N.E. 2d 136). On **May 12, 2006** the Petitioner filed a Leave To Appeal to the Illinois Supreme Court and said Leave was denied on **September 27, 2006** (Case # 102726 at 857 N.E.2d 679)

Regarding the time-toll issue Petitioner contends that the facts illustrated above clearly indicate that his Petition for Writ of Habeas Corpus pursuant to §2254 is timely filed as it relate to his request for a Stay as outlined on the following page.

* Petitioner was remanded back to the Circuit Court to be resentence per the Appellate Court August 3, 2001 Order after the State Prosecutors Leave to Appeal to the Illinois Supreme Court was denied in January of 2003.

B.

Request For Stay

Federal District Court has discretion to Stay a mixed Habeas Petition containing exhausted and unexhausted claims to allow the Petitioner to present his unexhausted claims to the State Court in the first instance, and then to return to Federal Court for review of his perfected Petition. 28 U.S.C.A. §2254 (b) (1) (a) Rhines v. Weber, 125 S.Ct. 1528, 544 U.S. 269 (2005).

In the instant case eight (8) of the grounds presented has been fully exhausted while the remaining claims is currently pending before the trial Court with Court appointed counsel. (See Exhibit 1 and 2 attached).

As this Court is fully aware, an Illinois Post Conviction Petition that does not have merits is, as a matter of procedure , dismissed at the first stage. It's only when the trial court find that the Post Conviction has merits would it be allowed to go to the second stage with Court appointed counsel. 725 Illinois Compile Statutes, section 5/122-4 (See People v. Rivera, 198 Ill.2d 364 (Sup. Ct. 2001).

Petitioner consolidated his State Post Conviction along with a Petition for Relief From Judgment pursuant to 735 Illinois Compile Statutes, section 2-1401. Petitioner submits to this Court that both of the consolidated Collateral Petitions is pursued in good-faith with the legal assistance of Law Clerks Craig and Boggan.

In U.S. ex rel. Santiago v. Hinsley, 297 F. Supp. 2d 1063 (N. D. Ill. 2003), the Court held that a Stay of Federal Habeas proceeding on mixed petition was appropriate pending State Court action on contemporaneously filed State Post Conviction Petition on unexhausted claims.

Even where Stay and abeyance is appropriate in a Habeas Proceeding involving a mixed petition of exhausted and unexhausted claims, the District Court's discretion in structuring the Stay is limited by the timeliness concerns reflected in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); thus, a mixed petition should not be Stayed indefinitely, but rather, District Courts should place reasonable time limits on a Petitioner's trip to State Court and back. Rhines v. Weber, 125 S.Ct. 1528, 544 U.S. 269 (2005).

If Petitioner does not receive a New Trial in this matter in the State Court on his pending collateral Petition's. He seek a Stay to return to this Court on his \$2254 WRit 21 days after an adverse decision from the Illinois State Supreme Court.

WHEREFORE, Frederick R. Lambert, Petitioner, Pro Se, Respectfully move this Court for a Stay based upon the facts and argument shown above.

Prayer For Relief :

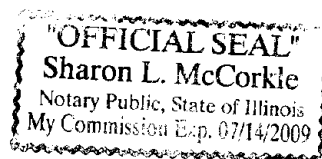
An Order Of Stay With 21 days to return to this Court if necessary after timely Appeals in the State Court.

Respectfully Submitted : *Frederick R. Lambert*

Subscribed and Sworn to before me
this 8th day of April 20 08.

Notary:

Sharon L. McCorkle



STATE OF ILLINOIS)

) SS :

Sworn Affidavit

COUNTY OF LAWRENCE)

I, Frederick Lambert, Petitioner and affiant, hereby states upon my oath that the following statements are both true and correct in substance and in facts. As such, Petitioners state :

1. That I am the affiant and Petitioner ;
2. That Law Clerk David Williams has assistant me with this Renewal Motion For Stay ;
3. That I file the Motion for Stay in good faith and that its my belief that the Relief From Judgment and Post Conviction Consolidated Petition's that I have pending before the Winnebago Circuit Court has merits ;
4. That the State Collateral Petitions has been pending in the State Court since on or around March 29, 2007 (See docket sheet attached, Exhibit - 2) ;
5. That Petitioner is currently being represented by Private Counsel David H. Carter who has been appointed by the Court ;
6. That Petitioner does not seek to delay his Federal Writ of Habeas Corpus and the fact that he filed his State Collateral Petitions nearly five (5) months prior to filing his §2254 Petition indicates that he's sincere and that this is not a tactical strategy on his part ; and
7. That Petitioner **request a Stay with 21 days to return to this Court after exhausting his State claims. ; and**
8. That the dates highlighted in this Motion for Stay is accurate and that my Federal Habeas Corpus is timely filed several weeks its due date.

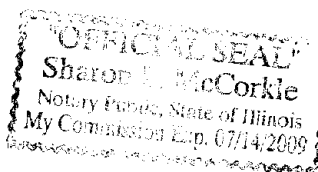
So Stated : *Frederick Lambert*

Subscribed and Sworn to before me this 8th day of April 20 08.

Notary :

Sharon L. McCorkle

Exhibit - 1



Date: 7/25/2007

CRIMINAL FELONY

Time: 8/42/19

Page: 1

1994 CF 000148 Judge: PETERSON K CRAIG From 1/01/2007 To 99/99/999

User: HOWARDT

Case Names _____ Attorney Names _____ Wsid: CC1001G0

VS

All Entries For

LAMBERT FREDERICK R

PD CHRISSIE GARZA

+

Date

3/29/2007 PETITION FOR POST CONVICTION RELIEF Filed Defendant LAMBERT FREDERICK
STATUS ON POST CONVICTION Apr 05,2007 01:30PM Rm467 Judge MCGRAW
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 PROOF/CERTIFICATE OF SERVICE Filed Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 APPLICATION TO SUR OR DEFEND AS A POOR PERSON Filed
Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 MOTION FOR APPOINTMENT OF COUNSEL Filed Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

4/05/2007 CONTINUE - ON DEFENDANT'S MOTION-NOTICE GIVEN
(No file in Court/Defendant's Papers only) - People of the State
of Illinois present by Assistant State's Attorney, STEVEN J.
BIAGI. Defendant not present, in DOC. Cause comes before the Court
on Defendant's Prose Petition for Post Convictions. Judge would
like file. On Defendant's motion matter continued for status.
STATUS ON POST CONVICTION Jun 06,2007 09:00AM Rm467 Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:MCNEELEY ANN M Clerk:JJF M

6/06/2007 Judge COLLINS ROSEMARY M
The people present by Prosecuting Attorney STEVEN J. BIAGI.
Defendant in DOC. Judge McGraw held to Jury trial. Cause
continued for status regarding Post Conviction Petition.
STATUS ON POST CONVICTION Jun 21,2007 09:00AM Rm467 Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:BRASSFIELD SANDRA Clerk:MJJ M

6/21/2007 CONTINUANCE-NOTICE GIVEN Judge KENNEDY J. TODD
People of the State of Illinois present by Assistant State's
Attorney, STEVEN J. BIAGI. Deft not present (DOC). ASA Biagi
present but not a party to the case yet. Case comes on for status
on deft's Petition For Post Conviction Relief. Judge McGraw is
held to trial in Boone County. Matter continued for Status on
deft's petition.
STATUS ON POST CONVICTION Jul 05,2007 09:00AM RmA Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:PASKY JOANN E Clerk:WF M

7/05/2007 CONTINUANCE - PUBLIC DEFENDER APPOINTED-NOTICE GIVEN
People of the State of Illinois present by Assistant State's
Attorney, STEVEN J. BIAGI. Defendant not present, Deft is in DOC.
Public Defender appointed. PD Winzeler appears. On motion of the
defendant case is continued for status.
STATUS ON POST CONVICTION Sep 06,2007 09:00AM RmA Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:GIERWIATOSKI JANET S Clerk:SAN M

7/05/2007 PUBLIC DEFENDER APPOINTED-NOTICE SENT
Document NOTPD2 Was Printed
Judge:MCGRAW JOSEPH G Rep:GIERWIATOSKI JANET S Clerk:SAN M

Exhibit-2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FREDERICK RICKY LAMBERT,)	
)	
Petitioner,)	
)	
vs.)	CIVIL NO. 07-cv-607-MJR
)	
LEE RYKER,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

REAGAN, District Judge:

In this habeas corpus action, filed pursuant to 28 U.S.C. § 2254, Petitioner brings a collateral attack on his 1998 conviction for first-degree, for which he is serving a 60-year sentence.

Petitioner was convicted in Winnebago County, which is situated in the federal judicial district for the Northern District of Illinois. 28 U.S.C. § 93(a). He is confined in this District in the Lawrence Correctional Center. 28 U.S.C. § 93(c). Both this Court and the Northern District court have jurisdiction over this action. 28 U.S.C. § 2241(d). The Court finds that the Northern District is a more convenient forum for the hearing and determination of this habeas corpus action, particularly because the records of Petitioner's conviction may be found there, as may most of the participants in his trial. Pursuant to 28 U.S.C. §§ 2241(d) and 1404(a), and on the Court's own motion,

IT IS THEREFORE ORDERED that this action is **TRANSFERRED** to the United States District Court for the Northern District of Illinois, Western Division, for a determination as to whether Respondent should be held to answer the petition, 28 U.S.C. § 2243; 28 U.S.C. § 2254 Rule

Exhibit - 3

4, and such further proceedings as that Court may deem appropriate. Neither the writ of habeas corpus nor any rule to show cause shall issue in this action unless so directed by the transferee court. Petitioner's motion for appointment of counsel and motion for stay are **DENIED** without prejudice.

IT IS SO ORDERED.

DATED this 31st day of March, 2008.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS ^{APR 14 2008}

FREDERICK R. LAMBERT,)
(N-30421))
Petitioner,)
)
vs.)
)
LEE RYKER,)
)
Respondent..)

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT
08c 50059

CASE NO. 07 - 607 - MJR

CERTIFICATE OF SERVICE

I, Frederick R. Lambert, certify that I sent through the United States
Postal Service a copy of the attached Renewal of Motion for Stay ; and
Renewal MOTion For Appointment of Counsel .

by placing same in an envelope addressed to the Clerk of this Court and a copy
sent to Respondent.

Frederick R. Lambert N-30421

Lawrence Correctional Center

RR 2 Box 31

Sumner, IL. 62466

said envelope was placed in the mailbox at the Lawrence
Correctional Center on the 8th day of April, 2008 with postage
fully prepaid.

S/S Frederick Lambert
PETITIONER-PLAINTIFF

DATE: April 8th, 2008



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MAILED FROM ZIP CODE 62466



THIS CORRESPONDANCE IS FROM
AN INMATE OF THE
IL DEPT OF CORRECTIONS

Order of Lambert, N.Y. 14
P.O. Box 51
Sumner, N.Y. 14156

PROCESSED
MAIL